



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

22 JAN 2004

Ms. Debra Knight
Environmental Coordinator
Mirant Potomac River, LLC
1400 North Royal Street
Alexandria, VA 22314,

Dear Ms. Knight:

The United States Environmental Protection Agency (EPA) hereby informs Mirant Corporation by the attached Notice of Violation (NOV) that it is operating its Potomac River Power Plant in violation of the federally-enforceable Virginia State Implementation Plan (SIP).

Pursuant to the Clean Air Act, Mirant Corporation has an opportunity to confer with EPA to discuss the enclosed NOV and violations, as specified in the NOV. Please contact Richard Killian of the Air Protection Division to arrange a conference, or if you have any questions concerning this correspondence at 215-814-2159.

Sincerely


Judith M Katz, Director
Air Protection Division



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Customer Service Hotline: 1-800-438-2474*

1 EPA is authorized by Section 113 of the Act, 42 U.S.C. § 7413, to take action to ensure that air pollution sources comply with all federally applicable air pollution control requirements. These include

requirements promulgated by EPA, and those contained in federally enforceable State Implementation Plans (SIP) or permits.

2. The term "applicable implementation plan" is defined in Section 302(q) of the Act, 42 U.S.C. § 7602(q).
3. Section 110(a)(1) of the Act requires that the Commonwealth of Virginia maintain a SIP, approved by the U.S. Environmental Protection Agency (EPA), to provide for the attainment of the National Ambient Air Quality Standards (NAAQS).
4. The applicable implementation plan for the Commonwealth of Virginia (Virginia SIP) is codified at 40 C.F.R. Part 52, Subpart W, §§ 2420 et seq.

FINDING OF VIOLATIONS

5. The Potomac River plant, owned and operated by Mirant, is located in Alexandria, Virginia, in an area that was designated as "serious non-attainment" for ozone on November 15, 1990. On April 17, 2003 (See Fed. Reg. 19106), the area was re-designated to "serious non-attainment" for ozone. Therefore, the air quality in Alexandria, as well as that for the significant section of Northern Virginia, Washington, D.C., and suburban Maryland, does not meet the ozone NAAQS criteria.
6. Emissions of NOx contribute to the formation of low-level ozone.
7. The Virginia Department of Environmental Quality (VADEQ) issued a Permit to Operate to the Potomac River plant on September 18, 2000, which limited the facility-wide emissions of NOx, measured as nitrogen dioxide (NO₂) during the ozone season. This permit was issued in accordance with 9 VAC 5-80-800 C.2.b., as required by Section 110 of the Act, 42 U.S.C. §7410(a)(2)(D)(i).
8. The ozone season commences on May 1st and continues until September 30th of each year.
9. The Permit to Operate was approved by EPA and has been incorporated into the Virginia SIP. See Fed. Reg. at 78,1000 (December 14, 2000).
10. The Permit to Operate limited facility-wide emissions of NOx to no more than 1,019 tons during the ozone season (See Condition 3).

11. Condition 4 of the Permit to Operate requires the Potomac River plant to comply with the NOx ozone season emission limit commencing in 2003.
12. On August 26, 2003, VADEQ was informed by Mirant that the NOx emissions emitted from the Potomac River plant beginning with the commencement of the 2003 ozone season was approximately 1,174 tons. The reported amount exceeded the limit included in Permit Condition 3 of the Permit to Operate by approximately 155 tons.
13. After August 26, 2003, Mirant continued to operate the Potomac River plant at substantially similar operational levels, as it did for the period from May 1, 2003 through August 26, 2003. By the end of the 2003 ozone season, the emissions of NOx from the plant totaled approximately 2,139 tons, approximately 965 tons in excess of the emission limit in Permit Condition 3.
14. To date, upon information and belief, Mirant has taken no steps to ensure that NOx emission levels for the 2004 ozone season will meet Condition 3 of the Permit to Operate.

ENFORCEMENT

Section 113(a) (1) of the Act provides that at any time after the expiration of 30 days following the date of the issuance of this Notice, the Regional Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the SIP or permit, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation before January 30, 1997¹, and no more than \$27,500 per day for each violation after January 30, 1997. Section 113(c) of the Act, as amended, 42 U.S.C. § 7413(c), further provides for criminal penalties or imprisonment, or both, for any person who knowingly violates any plan or permit requirement more than thirty (30) days after the issuance of a Notice of Violation.

PENALTY ASSESSMENT CRITERIA

¹ Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, and the Debt Collection Improvement Act of 1996, EPA may assess a civil penalty of up to \$27,500 per day per violation of the Act for violations occurring after January 31, 1997. See Civil Monetary Penalty Inflation Adjustment Rule, 61 Fed. Reg. 69360 (1996) (codified at 40 C.F.R. Parts 19 and 27).

Section 113(e) (1) of the Act, as amended, 42 U.S.C. § 7413(e) (1), states that the court, in an action for assessment of civil or criminal penalties shall, as appropriate in determining the amount of penalty to be assessed, take into consideration (*i.e.*, in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of non-compliance, and the seriousness of the violation.

Section 113(e) (2) of the Act, as amended, 42 U.S.C. § 7413(e) (2) allows the court to assess a penalty for each day of violation. For purposes of determining the number of days of violation, where the United States makes a prima facie showing that the conduct or events giving rise to this violation are likely to have continued or recurred past the date of the NOV, or a previously issued air pollution control agency NOV for the same violation, the days of violation shall be presumed to include the date of this NOV, or the previous NOV, and each and every day thereafter, until respondent establishes that continuous compliance has been achieved; except to the extent that respondent can prove by the preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

OPPORTUNITY FOR CONFERENCE

The respondent may, upon request, confer with EPA. The conference will enable respondent to present evidence bearing on the finding of violation, on the nature of violation, and on any efforts it may have taken or proposes to take to achieve compliance. Respondent has a right to be represented by counsel. A request for a conference must be made within 10 days of receipt of this NOV. A request for a conference, and/or any other inquiries concerning the NOV should be made in writing to:

Richard P. Killian
Senior Environmental Enforcement Case Engineer
Air Protection Division
U. S. Environmental Protection Agency - Region III
Mail Code 3AP12
1650 Arch Street
Philadelphia, PA 19103-2029
(215) 814-2159

EFFECTIVE DATE

This NOV shall be effective immediately upon receipt.

QUESTIONS REGARDING NOV

If you have any questions concerning the issuance of this NOV, you may contact Richard P. Killian of my staff at 215-814-2159.

1/22/04

Date



Judith M. Katz, Director
Air Protection Division